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Pro Hac Vice (to be filed)

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEWJERSEY**

PHARMScript, L.L.C.,

Plaintiff,

v.

ST. FRANCIS OF WILLIAMSVILLE
NURSING HOME,

Defendant.

Case No.: 3:17-cv-05966-BRM-DEA

MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO INTERVENE BY
COMPREHENSIVE AT WILLIAMSVILLE
LLC

Comprehensive at Williamsville LLC (“Intervenor”) hereby moves this Honorable Court, pursuant to Fed. R. Civ. P. 24(a), for leave of court to intervene in the above captioned matter. In support of its motion, Intervenor states as follows:

1. Intervenor operates a skilled nursing facility at 147 Reist St., Williamsville, NY 14221.
2. Under Fed. R. Civ. P. 24(a)(2), “anyone” must be granted leave to intervene where that individual or entity “claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a

practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.”

3. On August 9, 2107, Plaintiff Pharmscript L.L.C. (“Plaintiff”) filed the instant lawsuit against Defendant St. Francis of Williamsville Nursing Home (“Defendant”). In the lawsuit, Plaintiff alleges that “St. Francis of Williamsville Nursing Home” operates a skilled nursing facility located at 147 Reist St, Williamsville, NY 14221. (Dkt. No. at paragraph 3).

4. The disposition of this lawsuit potentially may impair Intervenor’s interests and Intervenor falls into the category contemplated by Fed. R. Civ. P. 24(a) where Intervenor must be granted leave to intervene as of right.

5. Upon information and belief, there is no corporate entity named “St. Francis of Williamsville Nursing Home.” However, as stated above, it is Intervenor that operates a skilled nursing facility at that same address, 147 Reist St., Williamsville, NY 14221.

6. Although the undersigned counsel represent Intervenor, they cannot formally appear on behalf of “St. Francis of Williamsville Nursing Home” because no such legal entity exists.

7. The entity confusion described herein is likely attributable to two reasons. First, the contract at issue in the Complaint describes the contracting parties as “Pharmscript, L.L.C.” and “St. Francis of Williamsville Nursing Home.” Second, because the contract uses the name, “St. Francis of Williamsville Nursing Home,” attorney Nathan mistakenly stated during a privileged settlement communication with Plaintiff’s counsel that he represented “St. Francis of Williamsville Nursing Home.” In fact, as described above, the undersigned counsel only represent Intervenor and do not represent the non-entity and named defendant “St. Francis of Williamsville Nursing Home.” Attorney Nathan previously explained this mistake to Plaintiff’s counsel Andrew Thomas Hahn, Esq. and

provided to him the corporate entity information described herein after attorney Nathan learned of the instant lawsuit, but *before* Plaintiff made any request enter default against Defendant.

8. However, on September 25, 2017, Plaintiff requested that the clerk of court enter default against “St. Francis of Williamsville Nursing Home.” (Dkt. No.9). Default was entered by the clerk the following day on September 26, 2017. (Dkt. 10).

9. Plaintiff’s Request for Entry of Default asserted that “St. Francis of Williamsville Nursing Home” was a non-profit New York business entity that was properly served. (Dkt. No.9-1, paragraph 7). Upon information and belief, this is not accurate because, as stated above, there is no legal entity by the name of “St. Francis of Williamsville Nursing Home.”

10. It is possible, however, that the entity Plaintiff intended when it described this non-profit entity is “St. Francis Home of Williamsville, New York.” (See New York Department of State Division of Corporations Printout, attached hereto as Exhibit 1). However, the undersigned do not represent “St. Francis Home of Williamsville, New York.”

11. Although Intervenor does not have control over the non-profit entity “St. Francis Home of Williamsville, New York,” Intervenor has an interest in this litigation because it currently operates the skilled nursing facility located at 147 Reist. St, Williamsville, NY 14221, which is the same location where Intervenor operates its business. (See Certificate, attached hereto as Exhibit 2).

12. Intervenor seeks leave of court to intervene so that it may provide the Court with corporate information consistent with this memorandum by submitting the attached letter to the Court. (Letter to Court, attached hereto as Exhibit 3).

13. Therefore, Intervenor respectfully requests that this Honorable Court grant it leave to intervene in this matter, consistent with the proposed order submitted herewith.

Dated: November 26, 2017

Respectfully submitted by:

LAWRENCE C. HERSH

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Pro Hac Vice (to be filed)

Attorneys for Intervenor

EXHIBIT 1

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through September 7, 2017.

Selected Entity Name: ST. FRANCIS HOME OF WILLIAMSVILLE, NEW YORK

Selected Entity Status Information

Current Entity Name: ST. FRANCIS HOME OF WILLIAMSVILLE, NEW YORK

DOS ID #: 135095

Initial DOS Filing Date: JANUARY 27, 1961

County: ERIE

Jurisdiction: NEW YORK

Entity Type: DOMESTIC NOT-FOR-PROFIT CORPORATION

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

C/O PRESIDENT, CATHOLIC HEALTH SYSTEM, INC.

CORPORATE OFFICE

144 GENESEE STREET

BUFFALO, NEW YORK, 14203

Registered Agent

NONE

This office does not record information regarding the names and addresses of officers, shareholders or directors of nonprofessional corporations except the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate of incorporation, however this information is not recorded and only available by [viewing the certificate](#).

***Stock Information**

# of Shares	Type of Stock	\$ Value per Share
No Information Available		

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
JAN 27, 1961	Actual	ST. FRANCIS HOME OF WILLIAMSVILLE, NEW YORK

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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EXHIBIT 2



Department
of Health

NYS Health Profiles

Find and Compare New York Health Care Providers

Comprehensive Rehabilitation and Nursing Center at Williamsville

147 Reist Street
 Williamsville, NY 14221
 (716) 633-5400
 Web site: www.chsbuffalo.org/Facilities/NursingHomes/StFrancis

Services

- Baseline Services

Beds

Residential Health Care	142
Total Number Of Beds	142

Administrative

- Ownership: Proprietary--LLC
- Operated by: Comprehensive at Williamsville LLC
147 and 149 Reist Street
Williamsville, NY 14221
- PFI: 0274
- Operating certificate: 1421308N
- DOH Regional Office: **Western NY - Buffalo**
- Medicaid, Medicare certified

Statistics

- Employee Flu Vaccination Rate: 47.0%
- Occupancy Rate: 90.1%

Ombudsman

Educating, empowering and advocating for long-term care residents.

The Ombudsman Program is an effective advocate and resource for older adults and persons with disabilities who live in nursing homes, assisted living and other licensed adult care homes. Ombudsmen help residents understand and exercise their rights to good care in an environment that promotes and protects their dignity and quality of life.

The Ombudsman Program advocates for residents by investigating and resolving complaints made by or on behalf of residents; promoting the development of resident and family councils; and informing government agencies, providers and the general public about issues and concerns impacting residents of long-term care facilities.

The Office of the State Long Term Care Ombudsman maintains a directory of ombudsman coordinators by county. To view this directory, please visit <http://www.ltcombudsman.ny.gov/whois/>.

Retrieved from https://profiles.health.ny.gov/nursing_home/printview/150369 on Mon Sep 18 2017 15:06:03 GMT-0500 (CDT)

EXHIBIT 3



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Chicago, IL 60603 Woodbury, NY 11797

Shneur Nathan, Esq.
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November 26, 2017

VIA CM/ECF Delivery

The Honorable Brian R. Martinotti

Re: Pharmscript L.L.C. v. St. Francis of Williamsville Nursing Home,
3-17-cv-05966-BRM-DEA

Dear Judge Martinotti:

I write on behalf of Comprehensive at Williamsville LLC (“Intervenor”), a New York business entity doing business at 147 Reist St, Williamsville, NY 14221. There appears to be some confusion in this case as to corporate names which we would like to clear up. It is my understanding that the contract at issue in Plaintiff’s complaint describes the contracting parties as follows:

PHARMACEUTICAL SERVICES CONTRACT

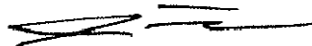
This Pharmaceutical Services Contract (the "Agreement") dated May 5, 2015 (the "Effective Date") by and between PharmScript, LLC, a New Jersey limited liability company with its office located at 81 Glendale Avenue, Edison NJ 08817 (hereinafter, the “Pharmacy”) and St. Francis of Williamsville Nursing Home, with its office located at 147 Reist Street, Williamsville, NY 14221 (hereinafter, the “Facility”).

Because of the way that the contract describes the skilled nursing facility involved, I engaged in a preliminary settlement correspondence that stated I represented *St. Francis of Williamsville Nursing Home*. This was an error and Mr. Nathan subsequently explained that error to counsel for Plaintiff, Mr. Andrew Hahn. I do represent Intervenor, which operates the skilled nursing facility at the location described in the complaint. However, upon information and belief, there is no business entity by the name of “St. Francis of Williamsville Nursing Home.” Intervenor has attached various proofs of existence of corporate entities and names of those entities to its motion for leave to intervene which accompanies this letter.

To the extent that the plaintiff in this matter seeks to hold Intervenor liable in this litigation, Intervenor would seek to file an answer or otherwise plead in response to plaintiff’s complaint.

The undersigned affirms, under penalty of perjury, that the foregoing facts are true and correct, except as to those that are listed upon information and belief, and as to those facts, the undersigned reasonably believes them to be true and correct.

Respectfully,

A handwritten signature in black ink, appearing to read 'SHNEUR NATHAN', with a horizontal line extending to the right.

SHNEUR NATHAN
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(Pro Hac Vice Motion to Be Filed)